



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY**

**P L A N N I N G   D E P A R T M E N T**

**Chris Bazar**  
Agency Director

April 27, 2021

Agenda Item #5 May 6, 2021

**Albert Lopez**  
Planning Director

224  
West Winton Ave  
Room 111

Honorable Board of Supervisors  
Administration Building  
1221 Oak Street  
Oakland, CA 94612

Hayward  
California  
94644

Dear Board Members:

phone  
510.870.6400  
fax  
510.785.8793

**SUBJECT:    PROPOSED AMENDMENTS TO THE CANNABIS RETAIL  
ORDINANCE (GENERAL CODE CHAPTER 6.108) AND COMBINED  
CANNABIS OPERATION ORDINANCE (GENERAL CODE CHAPTER  
6.109)**

[www.acgov.org/cda](http://www.acgov.org/cda)

**RECOMMENDATION:**

That the Board of Supervisors:

1. Adopt the proposed ordinance amending Chapter 6.108 to the Alameda County General Ordinance Code to regulate cannabis retail operations in the Unincorporated Area of the County of Alameda.
2. Adopt the proposed ordinance amending Chapter 6.109 to the Alameda County General Ordinance Code to regulate combined cannabis operations in the Unincorporated Area of the County of Alameda.

**BACKGROUND:**

The Board Transportation/Planning Committee has directed staff to prepare amendments to the County General Ordinance Code to allow the one remaining unallocated permit for a cannabis retail store in unincorporated Alameda County to be allowed in West County or East County and, if in East County, to require it to be a "boutique" operation located within the boundaries of the South Livermore Valley Area Plan (SLVPA), as shown on the attached map, and to remove the 5-mile separation distance requirement from other cannabis retail operations. County staff has prepared the attached ordinance amendments making these changes. The amendments also include related revisions to the Combined Cannabis Operations (CCO) ordinance to enable the one remaining unallocated permit for a cannabis retail store to apply to become a CCO if they wish to do so, as other cannabis retail permit-holders can.

**DISCUSSION/SUMMARY:**

The Alameda County General Ordinance Code currently allows a maximum of five permits for cannabis retail in unincorporated Alameda County. Two are allowed in East County, and those permits have been issued through a Request for Proposals (RFP) process. Three are allowed in West County, with a maximum of two allowed in Area 1 (Ashland and Cherryland) and Area 2 (Castro Valley), as shown on the attached map.

The two existing cannabis retail stores – We Are Hemp and Garden of Eden – are both located in Area 1. Therefore, the remaining one unallocated cannabis retail permit would currently be allowed only in Castro Valley. Any future permit would be issued through an RFP process, and the successful applicant would need to obtain a Conditional Use Permit (CUP) prior to commencing operation.

To allow the remaining permit for a cannabis retail store to be allowed in West County or East County and to require the operation to be “boutique” if it is in East County, Chapters 6.108 and 6.109 of the County Ordinance Code would need to be amended. Chapter 6.108 regulates cannabis retail permits and Chapter 6.109 regulates the ability for a permitted retail store to apply to become a CCO. A CCO allows a cannabis retail permit holder to include at least two of the following activities - cultivation, manufacturing and/or distribution - in addition to retail, with cultivation limited to no more than 10,000 square feet.

### **Proposed Ordinance Amendments**

The main changes proposed in the draft ordinance amendments are to:

- Amend paragraph D of Chapter 6.108.030 so the total number of permits in West County and East County shall not exceed three, retaining the overall maximum of five permits in total; and
- Include in paragraph D.2. of Chapter 6.108.030 the following requirements for any third permit in East County:
  - “b. If a third permit is issued for a retail operation in the unincorporated area shown in Exhibit B (East County), that permit must be issued to a retail operation within the boundaries of the South Livermore Valley Area Plan area and the retail operation must include a boutique component or components (e.g., educational or informational features or activities, or other features or activities designed to enhance customer experience or highlight attractions or characteristics of the local region). If only two permits are issued for the East County, they may but are not required to include a boutique component or components.
  - c. If a third permit is issued for a retail operation pursuant to paragraph D.2.b., the five-mile separation distance required in paragraph D.2.a. does not apply to that retail operation. The premises of the operation permitted pursuant to paragraph D.2.b may be within five miles of another retail operation in the unincorporated area shown in Exhibit B (East County).”

The proposed changes to Chapter 6.109 are related amendments that would enable a third cannabis retail permit in East County to apply to become a CCO.

### **Public Comments Received**

On October 27<sup>th</sup>, staff provided draft ordinance amendments to the Agricultural Advisory Committee (AAC) for consideration. Comments raised by the public and members of the committee during the meeting in relation to the proposed ordinance changes included discussion of the following items:

- Suggestions that a “boutique” operation should be more clearly defined;
- Support for the concept of including educational or informational features to be a boutique operation;

- Support for the potential economic benefits an additional cannabis retail operation could bring to boost agritourism and visitor numbers and be an economic driver in East County;
- Concern about whether the proposed amendments for boutique cannabis retail would include on-site consumption (staff confirmed the current ordinances and proposed amendments do not allow this);
- Concern that it is inappropriate to allow an additional cannabis retail operation in the unincorporated East County, and any retail should be located within the adjoining cities; and
- Whether the boutique cannabis retail operation should be subject to additional requirements. For example, to feature local products, have a connection to or collaboration with local cultivators, reflect the character of the community or be limited to locations within the winery and tourism areas of East County.

The AAC passed a motion supporting the draft ordinance amendments, subject to adding a requirement that any boutique cannabis retail store in East County must “contribute to agritourism viability in East County”, must be limited to the South Livermore Valley, North Livermore Valley or Sunol, and would retain the 5-mile separation distance requirement between permitted retail operations.

In response to these comments and the draft ordinance amendments provided by staff, on November 2<sup>nd</sup> the Board Transportation/Planning Committee directed staff to restrict the availability of the boutique cannabis retail operation in East County to the South Livermore Valley Plan Area (SLVPA), and to remove the 5-mile separation distance requirement for the boutique cannabis retail operation.

#### **Planning Commission Comments**

Staff presented the draft ordinance amendments to the Planning Commission on December 7<sup>th</sup>, 2020. The item was continued to March 1<sup>st</sup>, 2021, and staff provided further information requested by the Commissioners in relation to the status of cannabis permits issued or in process, the possibility of expanding the area where the final cannabis retail permit is allowed beyond Castro Valley, to include the South Livermore Valley Plan Area (SLVPA), and the proposed non-prescriptive definition of a “boutique” cannabis retail operation. Comments from the Planning Commission and members of the public at the meeting on December 7<sup>th</sup>, 2020, included discussion of the following items:

- Concern about why, if there is interest in more permits, the ordinance amendments propose to retain the cap of five retail sites, and why the amendments propose more restrictions, limiting any retail in the SLVPA to boutique operations and limiting them to the geographic area of the SLVPA;
- Comments that the County’s cannabis ordinances as adopted were intended to be a pilot, and after the limited number of sites were operational, the County could consider possible amendments and a potential increase in the number of permits. However, none of the permitted sites are operational yet;
- Consideration of whether the number of retail permits should be increased to eight permits, to reflect the extent of interest being shown from potential cannabis retail permit applicants; and
- Support for the economic benefits a boutique cannabis operation could bring to the SLVPA, and for the requirement that any additional cannabis retail site in East County must be a boutique operation.

The Planning Commission voted to support a motion to recommend the ordinance amendments be adopted by the Board of Supervisors.

### **Board Transportation/Planning Committee**

Staff presented the draft ordinance amendments to the Board Transportation/Planning Committee on April 5<sup>th</sup>, 2021. Comments from members of the public included the following:

- Concern that the cities of Livermore, Dublin and Pleasanton don't allow cannabis retail and retail should not be allowed in rural/ agricultural areas and is not appropriate in rural wine areas; and
- Support from a vineyard owner for the proposed changes to allow cannabis retail in South Livermore, as timely and necessary to support existing businesses in the area.

A comment was received from the Sheriff's Office confirming the Castro Valley Municipal Advisory Committee expressed concerns and lack of support for commercial cannabis operations in Castro Valley during the previous cannabis ordinance amendment process, and confirming the Sheriff's Office opposes additional cannabis retail in East County.

The Transportation/Planning Committee recommended the ordinance amendments proceed to the full Board of Supervisors for adoption.

### **California Environmental Quality Act (CEQA)**

The ordinance amendments are exempt from CEQA per state law. Business and Professions Code section 26055(h) exempts from CEQA the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review for commercial cannabis permits or other authorizations, where CEQA review will be part of that discretionary review. This exemption is effective through July 1<sup>st</sup>, 2021. Because all commercial cannabis operations in the County will require discretionary review in the form of a conditional use permit with associated CEQA review, this ordinance amendment is exempt.

### **CONCLUSION:**

Attachment A shows the draft ordinance amendments proposed. Staff recommends that your Board adopt the proposed amendments to the cannabis ordinances.

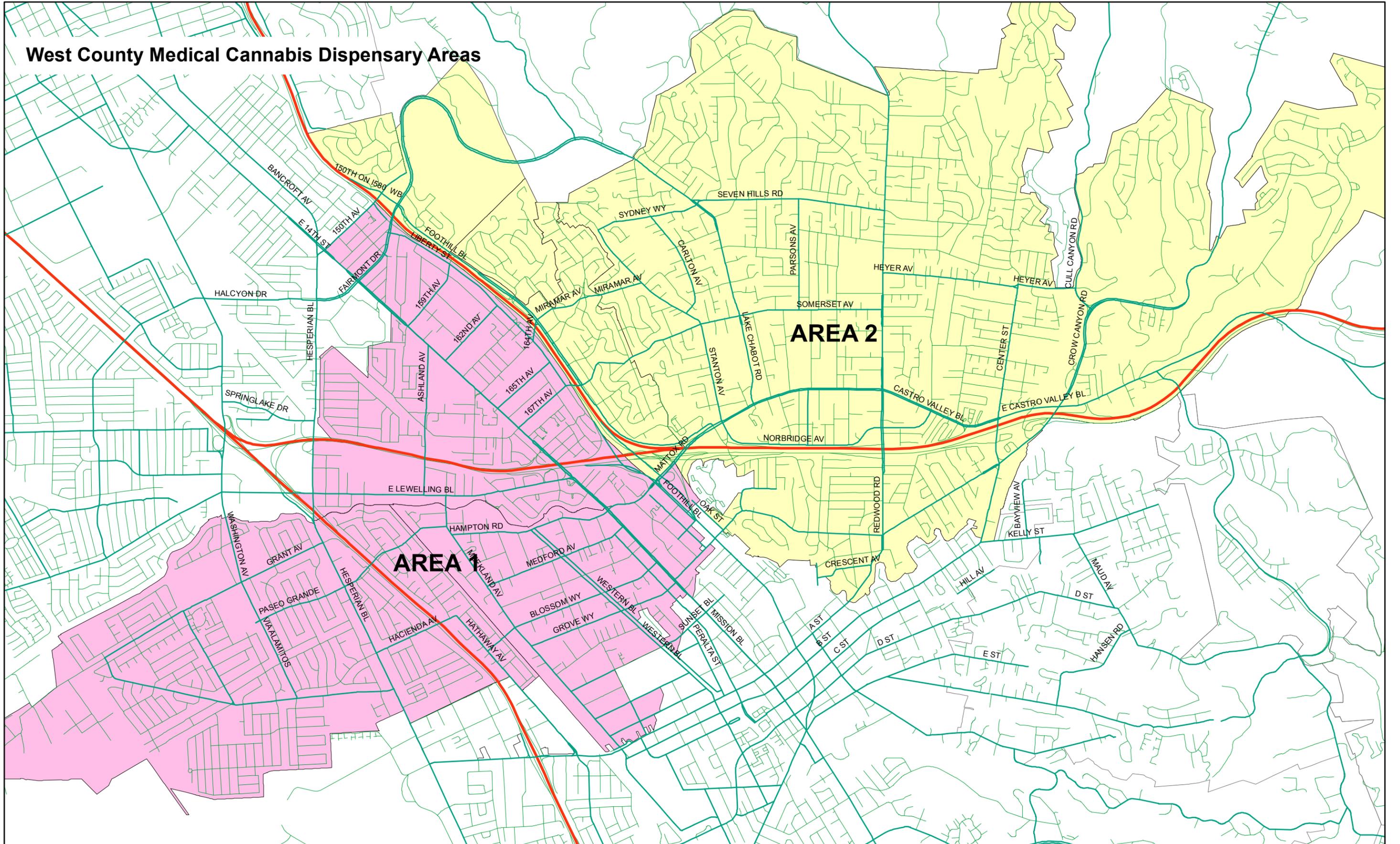
Very truly yours,

DocuSigned by:  
  
00001083382045A  
Chris Bazar, Director  
Community Development Agency

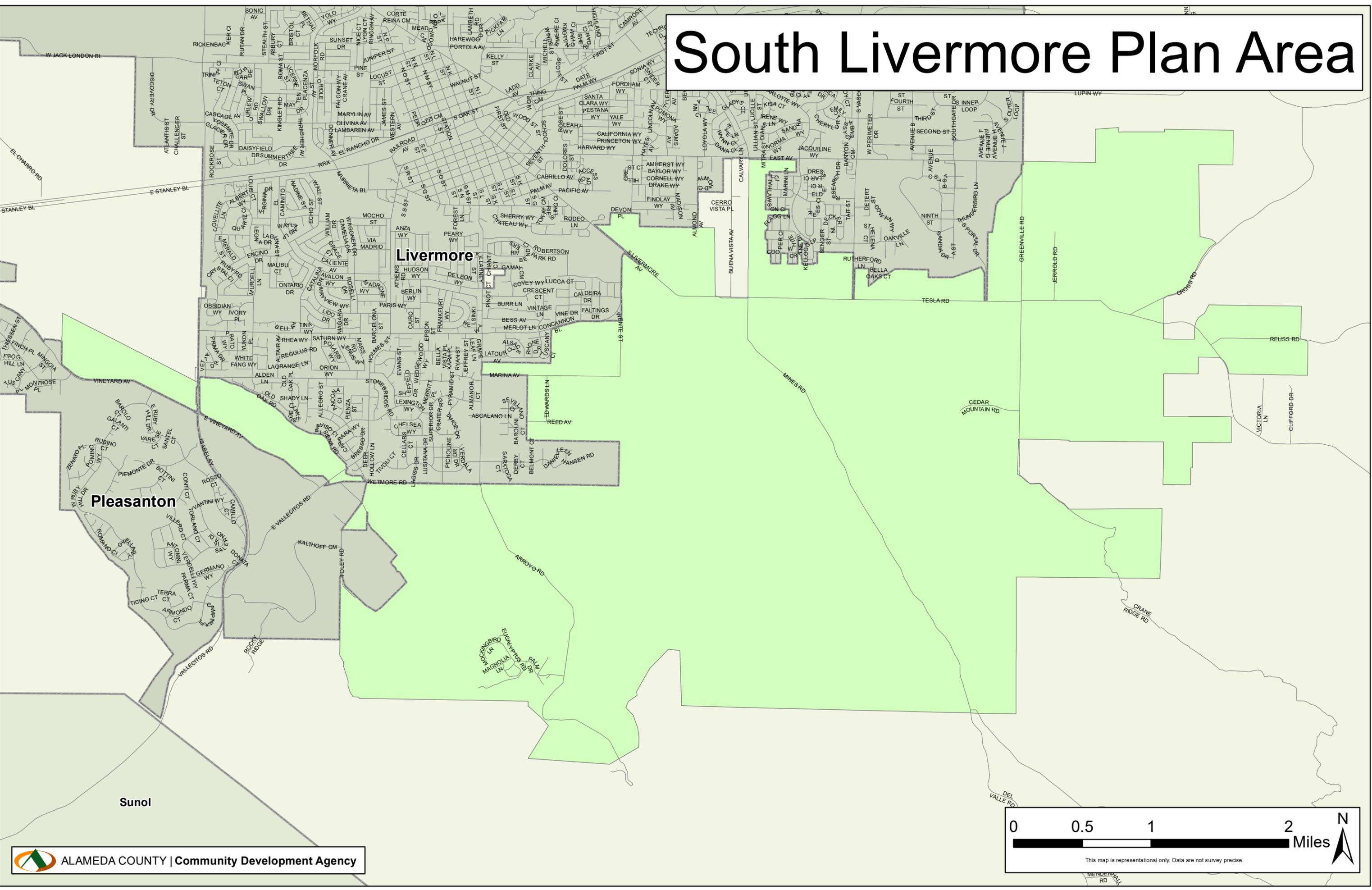
### **Attachments**

- **Attachment A** - Map of the South Livermore Valley Plan Area (SLVPA)
- **Attachment B** - Map of West County Retail Areas 1 and 2
- **Attachment C** - Ordinances amending Chapter 6.108 and Chapter 6.109
- **Attachment D** - Resolution Z-21-03 of the Planning Commission of the County of Alameda regarding ordinances amending Chapter 6.108 and Chapter 6.109

West County Medical Cannabis Dispensary Areas



# South Livermore Plan Area



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTERS 6.108 AND 6.109 OF THE ALAMEDA COUNTY GENERAL ORDINANCE CODE REGARDING RETAIL AND COMBINED CANNABIS OPERATIONS

SECTION I

The Board of Supervisors makes the following findings of fact in support of this ordinance:

1. In enacting this ordinance, the Board of Supervisors of the County of Alameda, State of California hereby reaffirms and incorporates by this reference the findings contained in Section 1 of Ordinance No. O-2019-22.
2. Pursuant to Chapter 6.108 of the Ordinance Code, up to two cannabis retail operations are allowed in the East County and up to three cannabis retail operations are allowed in the West County; and
3. As of the date of hearing for this ordinance, there are two existing retail operations in West County and the County has approved two Title 6 permits for retail operations in the East County following a competitive selection process, neither of which is yet operational; and
4. As of the date of the hearing for this ordinance, the County has not commenced a selection process for the third potential West County retail site (i.e., the fifth potential retail site for the unincorporated area); and
5. The Board of Supervisors finds that it will promote the health and welfare of residents to enable the fifth potential retail site for the unincorporated area to operate in either the more populated but geographically smaller West County or in the less populated but geographically larger East County; and
6. If the fifth potential retail site is permitted in the East County, the Board of Supervisors finds that it will promote the health and welfare of residents for the operation to include a boutique component or components (e.g., enhanced consumer environment, tours, educational experiences, other visitor-serving components); and
7. Pursuant to Chapter 6.109 of the Ordinance Code, retail operations can apply to become combined cannabis operations; and
8. All retail operations pursuant to Chapter 6.108 of the Ordinance Code and all combined cannabis operations pursuant to Chapter 6.109 of the Ordinance Code will be required to comply with state law and state regulations; and
9. Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. sections 801, *et seq.* or to license any activity that is prohibited under said Act except as mandated by State law; and

10. Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) exempt cannabis operators or operations from compliance with zoning and land use regulations, or, (3) allow any activity relating to the retail, delivery, cultivation, manufacturing, distribution, testing, or consumption of cannabis that is illegal under state or federal law.

SECTION II

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Alameda, as follows:

Paragraph D of Section 6.108.030 of the Alameda County General Ordinance Code is hereby amended to read as follows:

D. At no time shall the county have in effect more than five permits, including all permits issued for Exhibit A (West County) and Exhibit B (East County) combined.

1. In the West County, in no event shall the total number of permits for all areas shown in Exhibit A (West County) exceed three. No more than two permits shall be issued in any one of the two areas shown in Exhibit A (West County). No more than one permit shall be issued in the other area shown in Exhibit A (West County).
2. In the East County, in no event shall the total number of permits for all areas shown in Exhibit B (East County) exceed three.
  - a. No permit shall be issued for a retail operation within five miles of another retail operation in the unincorporated area shown in Exhibit B (East County) or within one mile of a permitted retail operation location in an incorporated city, except as provided in subparagraph c. below
  - b. If a third permit is issued for a retail operation in the unincorporated area shown in Exhibit B (East County), that permit must be issued to a retail operation within the boundaries of the South Livermore Valley Area Plan area and the retail operation must include a boutique component or components (e.g., educational or informational features or activities, or other features or activities designed to enhance customer experience or highlight attractions or characteristics of the local region). If only two permits are issued for the East County, they may but are not required to include a boutique component or components.
  - c. If a third permit is issued for a retail operation pursuant to paragraph D.2.b., the five-mile separation distance required in paragraph D.2.a. does not apply to that retail operation. The premises of the operation permitted pursuant to paragraph D.2.b may be within five miles of another retail operation in the unincorporated area shown in Exhibit B (East County).

3. No permit shall be issued in any portion of the unincorporated area that is not within one of the areas delineated in Exhibit A or Exhibit B.

The remainder of Section 6.108.030 remains unchanged.

Subparagraph 2 of Paragraph E of Section 6.109.030 of the Alameda County General Ordinance Code is hereby amended to read as follows:

2. In the East County, the maximum number of permits is subject to the following:
  - a. In no event shall the total number of combined cannabis operation permits for all areas shown in Exhibit B (East County) exceed thirteen (13).
  - b. Collectively, the number of retail operation permits and permits for combined cannabis operations that include a retail operation in the areas shown in Exhibit B (East County) shall not exceed three. If a third permit is issued to a retail operation or a combined cannabis operation including retail, that operation must include a boutique component or components (e.g., educational or informational features or activities, or other features or activities designed to enhance customer experience or highlight attractions or characteristics of the local region). If only two permits are issued for the East County, they may but are not required to include a boutique component or components.
  - c. No permit shall be issued for a combined cannabis operation that includes a retail operation, if the subject premises is within five miles of a retail operation or combined cannabis operation that includes retail in the unincorporated area shown in Exhibit B (East County) or within one mile of a permitted retail operation or combined cannabis operation (or equivalent permitted activity subject to a state microbusiness license) location in an incorporated city.

The remainder of Section 6.109.030 remains unchanged.

SECTION III

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following called vote:

AYES:

NOES:

EXCUSED:

ABSTAINED:

\_\_\_\_\_  
RICHARD VALLE  
President of the Board of Supervisors

ATTEST:  
Clerk of the Board of Supervisors,

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

DocuSigned By:  
By: Heather Littlejohn  
4F16CF9B888B421...  
Heather Littlejohn  
Deputy County Counsel

**RESOLUTION NO. Z-21-03 - AT MEETING HELD MARCH 1, 2021**

**RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF ALAMEDA  
REGARDING  
ORDINANCES AMENDING CHAPTERS 6.108 AND 6.109 OF THE COUNTY ORDINANCE  
CODE TO ALLOW THE REMAINING UNALLOCATED CANNABIS RETAIL PERMIT TO BE  
MADE AVAILABLE IN WEST OR EAST COUNTY AND, IF IN EAST COUNTY, TO REQUIRE  
IT TO BE A BOUTIQUE OPERATION**

**Introduced by Commissioner Ratto  
Seconded by Commissioner Crawford**

**WHEREAS** the Alameda County Planning Commission did hold one virtual webinar public hearing on the proposed amendments to the Cannabis Retail Ordinances (comprised of amendments to Chapter 6.108 and the Combined Cannabis Operation Ordinance (comprised of amendments to Chapter 6.109) (collective, “Ordinances”) at the hour of 3:00 p.m. on March 1, 2021, for which notice was given as required by law, and at which time the Commission took public testimony; and

**WHEREAS**, proposed amendments to the Ordinances, attached hereto as Exhibit A, will allow the one remaining unallocated permit for a cannabis retail store in unincorporated Alameda County to be allowed in West County or East County and, if in East County, to require it to be a “boutique” operation located within the boundaries of the South Livermore Valley Area Plan (SLVPA) and to remove the 5-mile separation distance requirement from other cannabis retail operations; and

**WHEREAS**, the Planning Commission is authorized and obligated to make recommendations to the Board of Supervisors on matters related to planning and zoning; and

**WHEREAS**, the testimony submitted in writing and at the public hearing and items in the public record have been considered by the Planning Commission prior to this action; and

**WHEREAS**, the complete record for this process is in the custody of the Alameda County Planning Department, and may be found at Room 111, 224 West Winton Avenue, Hayward, California 94544;

**NOW, THEREFORE,**

**BE IT RESOLVED**, that this Commission did resolve to recommend to the Board of Supervisors the adoption of the proposed amendments to the Alameda County General Ordinance Code regulating cannabis retail and combined cannabis operations as provided in Exhibit A (Ordinances).

**BY THE FOLLOWING VOTE:**

**AYES:** Commissioners Kelley, Kastriotis, Ratto, Crawford, Gin

**NOE:** Commissioner Goff

**EXCUSED:**

**ABSENT:**

**ABSTAINED:**

**RECUSED:** Commissioner Moore

ALBERT LOPEZ, PLANNING DIRECTOR AND SECRETARY,  
ALAMEDA COUNTY PLANNING COMMISSION